(27,127)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 376.

CLARK KNITTING COMPANY, INC., AND ÆTNA LIFE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

ELIZABETH VAUGHN.

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, OF THE STATE OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 4, 1919.

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a Court of Appeals, State of New York.

Before State Industrial Commission.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

Record on Appeal.

William H. Foster, Attorney for Appellants, Union Bldg., Syracuse, N. Y.

Hon. Merton E. Lewis, Attorney General, Attorney for State Industrial Commission, The Capitol, Albany, N. Y.

Robert W. Bonynge, Esq., Counsel for State Industrial Commission, 230 Fifth Ave., New York City.

Lee & Dowling, Attorneys for Claimant, Arcade Bldg., Utica, N. Y.

1 Court of Appeals, State of New York.

Before State Industrial Commission.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

Statement under Rule 41.

This is an appeal from an order of the Appellate Division, Third Department, made and entered in the office of the clerk of the Appellate Division, Third Department, on the 19th day of November, 1918, which affirmed an award of the State Industrial Commission made and entered in the office of the Commission on the 12th day of June, 1918, and also from an order of the Commission dated November 25, 1918. This proceeding was commenced by filing with the State Industrial Commission Employer's First Report of Injury, dated April 10, 1917. There has been no change of parties or attorneys since the commencement of this proceeding.

2 *Notice of Appeal.*

Supreme Court, Appellate Division, Third Department.

Before State Industrial Commission.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

vs.

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

SIRS: Please Take Notice that the Clark Knitting Co., Inc., employer, and the Ætna Life Insurance Company, Insurance Carrier, hereby appeal to the Appellate Division of the Supreme Court, Third Department, from an award of the State Industrial Commission made and entered in the office of the State Industrial Commission on the 12th day of June, 1918, and from each and every part of said award.

Dated June 19, 1918.

Yours, etc.,

WILLIAM H. FOSTER,
Attorney for Appellants.

3 Office & P. O. Address, Union Building, Syracuse, N. Y.

To Joseph H. Hollands, Clerk Supreme Court, Appellate Division, Third Department, Albany, N. Y.; Hon. Merton E. Lewis, Attorney General, Attorney for the State Industrial Commission, Albany, N. Y.; Robert W. Bonynge, Counsel State Industrial Commission, 230 Fifth Ave., New York City; Elizabeth Vaughn, Claimant, 716 Noyes St., Utica, N. Y.; Lee & Dowling, Attorneys for Claimant, 320-326 Arcade Bldg., Utica, N. Y.

Employer's First Report of Injury.

Ætna Life Insurance Co.,

Accident and Liability Dept.,

Hartford, Conn.

New York Office	100 William St.
Albany Office	Arkay Building.
Syracuse Office	Union Building.
Rochester Office	Dake Building.
Buffalo Office	White Building.

Bureau of Workmen's Compensation.

Claim No. —.

Case of Mrs. Elizabeth Vaughn.

Employer's name, Clark Knitting Co., Inc.
Office address (Street and number, city or village and county), 405 Washington Street.
Business (goods produced, work done or kind of trade or transportation), manufacturing knit underwear.
Location of plant or place of work where accident occurred
4 (if not at office address), (Street and number, city or village and county), 405 Washington St.
Date of accident, 9th day of April, 1917; hour of day, 7:10 A. M. Hour injured employee began work that day, 7 A. M.
Did accident happen on the premises? Yes.
Away from the plant of employer? —.
If away from the plant, state where. —.
Full name of injured employee, Mrs. Elizabeth Vaughn.
Address (Street and number, city or village and county), 716 Noyes St., Utica, N. Y.
Sex. Female.
Age. About 45.
Single, married, widowed or divorced. Married.
Speak English? Yes.
If not, what language? —.
Occupation when injured? Neck cutter.
In what department of plan- or branch of work? Finishing Dept.
Was injured employee doing *his* regular work? No.
If not, state regular occupation. Machine operator.
How long was injured person in your employment? Two months.
Piece or time worker? Time.
Wages or average earnings per day? $2.00.
Working hours per day. 10.
Name of machine, tool or appliance involved, if any. Shafting.
Power driven? Electric.
5 Hand or mechanical feed? —.
Part on which accident occurred? —.
Describe in full how the accident occurred. The operator of a tacking machine lost the screw out of the needle bar and Mrs. Vaughn came along and asked her what she was looking for and volunteered to help find it. Mrs. Vaughn discovered it on the floor on the opposite side of the sewing machine table and she got down on the floor and reached under the shaft and her hair caught in the revolving shaft and removed the scalp from forehead to the base of the skull.
State part of person injured and nature of injury. Scalp and hair removed from the forehead to the base of the skull.

Did injury cause loss of any member or part of member? —.
If so, describe exactly. —.
Was medical attendance provided by you? Yes.
How soon after accident? At once.
Name and address of physician. Dr. A. R. Grant, 321 Genesee St.
To what hospital was employee sent? Homeopathic Hospital.
If not sent to hospital, where is -he? —.
Are you still providing medical attendance? Yes.
Has employee returned to work? No.
Date and hour of return —— —, 191—, — A. M., P. M.
If so, is -he fully recovered and earning full wages? —.
6 If not returned to work, probable length of disability (give your best estimate). Impossible to estimate the length of disability.
In what company is compensation insurance carried? (must be answered). Ætna Ins. Co.
Signed at Utica, N. Y., this 10th day of April, 191—.
Firm name. Clark Knitting Co., Inc.
Signed, Thos. A. Clark. Official title, President.

Attending Physician's Report.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 1 Madison Avenue.

Bureau of Workmen's Compensation.

File No. —. Case No. —.

All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill out blank in ink, using pen or typewriter, and mail promptly to the Commission at its New York City Office.

1. Name of injured person. Elizabeth Vaughn. Address. Utica, N. Y.
2. Date of accident. April 9, 1917, at 7:20 A. M. Was first treatment rendered by you? Yes.
3. If not, by whom? —. Address —.
4. If an assistant, consultant or anæsthetist was necessary, give name and address. Asst., Dr. H. L. Pender, Anæsthetist.
7 5. Who furnished necessary medical supplies? Homeopathic Hospital, Dr. C. L. Haines. Was a nurse ordered by you? Two nurses.
6. Name of nurses. Miss Frankhause, Miss Green. Address. Utica, N. Y.
7. Was injured person removed to hospital? Yes. Name of hospital. Hom. Hosp. Address. Utica, N. Y.

8. Give an accurate description of the nature and extent of the injury. Complete *ovulsion* of scalp from hair line over frontal area to the seventh vertebra behind. Ears were torn down and cartilages severed.

9. Describe the treatment. Control of hemorrhage and attempt to unite ears and flaps of complete and partial *avalsed* scalp. The whole calvarium and neck will have to be skin-grafted.

10. Are the symptoms from which she is suffering due entirely to this injury? Yes.

11. Is she able to attend to any part of present or any other occupation? No.

12. Has the injury resulted in a permanent disability? Yes. If so, what? (Permanent disability, such as loss of whole or parts of fingers, etc., must be accurately marked on diagram). Whole scalp lost.

13. Has previous sickness or injury contributed to her disability? No. If so, to what extent? —.

14. Is there any evidence of syphilis? No. Tubercular infection? No. Alcoholism? No. Any infectious disease? No. Occupational disease? Machine caught hair. No. Neurasthenia? No. Hypochondriasis? No. Hysteria? No. Exaggeration? No. Is there evidence of malingering? No.

8

15. From what period, from the date of accident, is disability likely to exist? Many weeks — days.

16. State, in patient's own words, how accident occurred. I was crawling under a machine to get a button dropped by one of the girls.

17. Remarks. Her life is now (April 24) assured, but the whole head and neck will require grafting, followed by a suitable wig.

A. R. GRANT,
Attending Physician.

(Address:) 321 Genesee St., Utica, N. Y.
Graduate of N. Y. Univ. Med. Coll., year '97.
Date, Utica, N. Y., April 24, 1917.

Employee's Claim for Compensation.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 35470.

Case of —— ——.

Instructions.—To facilitate prompt payment of compensation the injured employee, or someone for him, should write carefully (using

ink or indelible pencil) answers to the following questions, and mail the same directly to the Commission within four weeks after date of injury.

9 I hereby make claim for compensation for an injury resulting in my disability, due to an accident upon the 9th day of April, 1917, arising out of and in the course of my employment by Clark Knitting Co. (Name of employer), of Utica (town), Oneida (county), N. Y. (State).

My claim is:

If totally disabled: From what date? —— —, 191—. Are you now disabled? Yes. If not, on what date were you able to return to work? —— —, 191—. If still disabled, how long do you estimate disability will continue? Don't know.

If mutilated: Thumb? —. First finger? —. Second finger? —. Third finger? —. Fourth finger? —. Phalange of thumb or finger? —. If so, which? —. Great toe? —. Other toe? —. Phalange of toe? —. Of which? —. Hand? —. Arm? —. Foot? —. Leg? —. Eye? —. Both eyes? —. Did you suffer loss of the member, or loss of use of the member? —. If loss of use, is such loss temporary or permanent? —.

If partially disabled: From what date? —— —, 191—. Are you still so disabled? —. If not, on what date did disability cease? —— —, 191—. If still partially disabled, how long do you estimate disability will continue? —. By how much have your daily earnings been reduced by this injury? — and for such other and further relief as I may be entitled to in consequence of such

10 injury.

In proof of such claim I make the followinig statements:

Place of Accident.

Location of plant where accident occurred. 405 Washington St. (Street and number).

In what city or village? Utica. County? Oneida.

If away from employer's premises or plant, state where accident happened. —.

The Injured Employee.

Full name of injured employee? Mrs. Elizabeth Vaughn.

Address? 716 Noyes St., Utica, N. Y. (Street and number, city or village and county).

Sex? Female. Age? 46. Do you speak English? Yes.

If not, what language? —. Are you married or single? Married.

Where were you born? Richfield Springs.

State occupation when injured? Assistant forelady. How long have you worked at this occupation? 22 years. How long have you worked for your present employer? About 3 months.

Were you doing your regular work when injured? Yes. Piece or time worker? Time. Wages, or average earnings, per day? $2.00.

Describe how accident occurred. Helping girl in factory locate screw from machine. While on floor electricity drew my hair into a shaft, removivng scalp.

Were safeguards provided? —. If so, was accident caused by removal of any safeguard? —.

Was your eyesight or hearing defective? —.

11 Medical Attendance.

Did you request your employer to provide medical attendance? Yes. Has he done so? Yes. What physician attended you? Dr. A. R. Grant. Address of physician: 321 Genesee St., Utica, N. Y.

Were you sent to hospital? Yes. If so, name and address of hospital? Homeopathic.

Where are you now? Homeopathic Hospital, Utica.

If married, give full name, address, and age of wife or husband: Stephen F. Vaughn, 716 Noyes St., Utica, N. Y.

If living with mother or father, give their name and address ——.

I hereby agree to accept the compensation awarded by the State Workmen's Compensation Commission in lieu of any other right or cause of action which I may have against any person, firm or corporation, in consequence of such accident; and, in consideration of such compensation, if any, when awarded, I hereby assign and set over unto the State Workmen's Compensation Commission, for the benefit of the State Insurance Fund, if compensation be payable therefrom and otherwise to the person or association or corporation liable for the payment of such compensation, all my right, title, and interest, if any, in such cause of action for such injury, loss, or damage against any person, firm, or corporation.

Signed, this 25th day of July, 1917, at Utica, N. Y.

(Injured employee making claim, sign full name here): Elizabeth M. Vaughn.

(Give address to which mail should be sent): 716 Noyes St.

12 STATE OF NEW YORK,
County of Oneida, ss:

On this 25th day of July, 1917, personally appeared before the undersigned, a Notary Public in and for the said County and State, the above named Elizabeth M. Vaughn, to me well known, and to whom I have read the foregoing questions and answers, and all the matter above stated, and who, after being fully advised in the premises, subscribed his name hereto in my presence, and made oath that the foregoing statements, and each and all of them, are full and true, and are made without reservation or concealment.

[SEAL.] RITCHIE J. PEGG.

Post-office address, 2 Clairmont Terran, Utica, N. Y.

Notice of Award.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

Syracuse Office: 428 South Salina Street.

Claim No. 35470 S.

Date, Sept. 31st, 1917.

To Clark Knitting Co., Employer, 405 Washington St., Utica, N. Y.; and Elizabeth Vaughan, Employee, 716 Noyes St., Utica, N. Y.; and Ætna, Insurance Carrier:

You are hereby notified that at a meeting of the State Industrial Commission held September 20th, 1917, a decision and award of compensation was made in the above matter, as follows:

13 $169.18 for 22 weeks' disability at $7.69 per week (this does not include first two weeks for which compensation is payable only in cases in which disability has lasted more than forty-nine days,) and the case was continued during disability.

The employer is hereby directed, in accordance with the provisions of the Workmen's Compensation Law, to pay the above award to the employee in the following manner: $169.18 at once for period from 4-23-17 to 9-24-17, and the balance (if any) periodically, in accordance with the method of payment of wages of the employee at the time of injury.

The above copy of the decision and award is sent to you pursuant to sections 20 and 23 of the Compensation Law.

STATE INDUSTRIAL COMMISSION.
JOHN MITCHELL, *Chairman*

Attest:
WILLIAM S. COFFEY, *Secretary,*
By J. A. PITTS, *For Chief of Claims.*

(NOTE.—Correspondence should be addressed to 428 South Salina Street, Syracuse, N. Y.)

(To the Claimant: Call at the office of the insurance carrier given above to collect the amount of award.)

14 *Hearing Nov.* 14, 1917, *Before Deputy Commissioner W. C. Richards at Utica, N. Y.*

Claim No. 35470.

Claimant: Elizabeth Vaughan.

Carrier: Ætna Life Insurance Company.

Appearances:

For Claimant, Attorney W. F. Dowling.
For Carrier, Attorney W. H. Foster.
H. M. Halloran, Hearing Stenographer.

By Deputy Commissioner Richards: The question to be considered in this case is the extent of disability. We proposed an award and notified the claimant of $169.18 for 22 weeks, carrying her compensation to September 24th, 1917.

By Mr. Foster: We have been paying her right along.

By Deputy Commissioner Richards: Evidently the award was not understood by the claimant, as she objects on the ground that the award is not sufficient. We simply made an award and continued it during disability. What is your further contention in the case, Attorney Dowling?

A. This is a case of practical permanent disability.

Q. Have you any contention only that?

A. That she is very seriously disfigured; she is compelled to wear false hair, and her neck is torn very badly on the side, and her face is discolored.

By Deputy Commissioner Richards:

15 Q. What have you to say, Mr. Foster?

A. I understand it is very serious.

Mrs. Elizabeth Vaughan sworn.

By Deputy Commissioner Richards:

Q. You are Mrs. Elizabeth Vaughn?
A. Yes.
Q. Your husband is living?
A. Yes.
Q. You are living with him?
A. Yes.
Q. You have no children?
A. No.
Q. You received an accidental injury on April 9th, 1917?
A. Yes.
Q. Have you recovered from that injury?

A No.
Q. You haven't returned to work?
A. I can't do my own work around the house.
Q. Your wages at that time were $2.00 a day?
A. Yes.
Q. Are you being paid compensation regularly?
A. Up until October 22nd—that was the last I received.
Q. What was the nature of the injury you received?
A. My scalp was torn off. The electricity drew my hair into the shaft; this shaft was in the mills of the Clark Knitting Company.
Q. What condition did that leave you in?
A. My face is disfigured.

By Mr. Dowling:

Q. At the present time, you are not even able to do your own housework?
A. No. I can't stoop over.
16 Q. You continue to suffer pain?
A. In my limbs.
Q. What about your nervous condition?
A. I am over nervous.
Q. You find that if you try to walk very far or anything excites you, you get very weak?
A. I have to take care most of the time.
Q. Would you be able to stand at a machine?
A. No.
Q. You suffer discomfort with your head?
A. Not with my head as much as my limbs.
Q. I notice your face is very dark,—previous to the accident you were fair complexion?
A. Yes.
Q. And you didn't have that dark color to your skin?
A. No.
Q. Your ear, your left ear was torn away, brought down on the neck?
A. Yes.
Q. Almost to the breast?
A. Yes.
Q. That has left a permanent scar on the left side of your neck?
A. Yes.
Q. Extending for several inches?
A. Yes.
Q. And also extends to the apex of the chin?
A. Yes.
Q. Have you any other marks on your neck?
A. No.
Q. Your hair with the exception of a very little in front of your head is entirely gone?
A. Also the skin.
Q. Whether or not the scalp was grafted?

A. Yes.

17 Q. And the skin taken from your left leg?

A. My both limbs.

Q. That has left a permanent disfigurement on your limbs?

A. Yes.

By Mr. Dowling: We claim that where the skin is removed that is part of the disability.

Q. Where the skin is removed from your legs, you still suffer from the effects of it?

A. Yes.

Q. That is true of both limbs?

A. Yes.

Q. Prior to this accident, were you in good health?

A. Yes.

Q. And working every day in the mill, and doing your housework at night?

A. Yes.

Q. You are how old?

A. 46.

Q. You are a married woman?

A. Yes.

Q. Have you a family?

A. No.

Q. How long were you confined to the hospital?

A. 22 weeks.

Q. You haven't been able to do any work since you were injured?

A. Peel a few potatoes and make a cup of tea,—I can't do any sweeping or washing or ironing.

Q. Nor lifting?

A. No.

Q. You were compelled to get false hair?

A. Yes.

Q. It is necessary for you to wear that?

A. Yes.

Q. Your eyesight is affected?

A. My left eye is a little weak; this eyebrow (left) was drawn way up.

Q. The eyebrow over the left eye was drawn up as a result of the accident?

A. Yes.

18 Q. Do you think of anything else that you suffered that you haven't described here?

A. No.

By Mr. Foster:

Q. How long had you been working?

A. From the 7th of January, 1917? Prior to that I hadn't worked for some time, I had been at home.

Q. Why hadn't you been working?
A. Several years ago I had a severe burn on my left arm, and my arm wasn't very strong, so I stayed home for a while.
Q. About how many years did you stay home from the result of your arm?
A. Seven years.
Q. So when you stated a few months ago that your health was good, you were mistaken?
A. I was not sick with it, that has nothing to do with this accident. After my arm was healed up I was perfectly well.
Q. But you hadn't worked for seven years?
A. No.
Q. Your arm had nothing to do with the fact that you didn't go to work?
A. No.
Q. Some months before the accident, you determined you would go to work?
A. Yes.
Q. For how long a time after you received the burn, were you laid up?
A. Eleven months.
Q. That healed up and you were all right?
A. Yes.
Q. Did that have any effect on your nervous condition?
A. No.
Q. You had entirely recovered?
A. Yes; I was perfectly well.
19 Q. How did you receive that burn?
A. Blacking a stove.
Q. You want to testify that as a result of that eleven months' suffering, your nervous condition was not in any way affected?
A. I didn't say that—I have always been a little nervous, but not as bad as now.
Q. To all practical purposes, you recovered from that burn at the end of 11 months?
A. I was perfectly well,—I gained in flesh.
Q. You were able to do your housework?
A. Yes.
Q. You were able to go around and do all those things?
A. Yes; the only thing I can't reach up high with that arm.
Q. You could work in the mill?
A. Yes.

Dr. A. R. GRANT, sworn:

By Mr. Dowling:

Q. You reside in Utica, doctor?
A. Yes.
Q. You are a duly licensed physician and surgeon?
A. Yes.

Q. You remember being called to attend Mrs. Vaughn?
A. Yes.
Q. What date were you called?
A. 9th of April.
Q. 1917?
A. Yes.
Q. Where did you go to see her?
A. At the Homeopathic Hospital.
Q. Will you describe her condition?

A. She had complete avulsion of scalp starting at the mar-
20 gin of her hair over her brows, and both her ears were torn off, one hanging on the breast.

Q. One hung on her breast?

A. Yes; and an effort was made to control the hemorrhage and revive her. We worked over her a good many hours to restore her vitality and save her life, and she finally rallied from the shock and severity of her injury. The scalp was not only torn, but in large areas the brain was bare of any covering, therefore making it difficult to form a new skin over the skull. We got the infection free from the wound by antiseptic treatment. We began the skin grafting under anesthesia which could be done sometimes once in two weeks, sometimes once in three weeks or four according to her condition. Her condition was very grave all through the early weeks of her confinement; her heart was bad; she carried a temperature that averaged 101½—from 99½ to 103, and her condition was very precarious all through that period, but eventually after repeated grafting—I think we grafted her head seven or eight times, and each time we put on from 50 to 75 and sometimes 100 individual grafts. Just a point that bears on the case so far as the person is concerned and her usefulness is concerned—these grafts had to be the full thickness of the skin—an ordinary graft won't take on an injury of this kind—it had to be a full thickness graft, and so that the disability she has and which she complains of is largely due to the necessity of taking full thickness of the skin down to the fat to make a scalp that will stand the least bit of pressure or will not break down and slough off. We believe we now have a
21 scalp that will be permanent with very little care. I think altogether there were several hundred grafts, over 525 grafts. This is a general statement of the wound and the method of endeavoring to bring her back to a condition of usefulness.

By Deputy Commissioner Richards:

Q. Doctor, we would like to know what is the probable duration of her disability following her condition, what is the prognosis of her case as far as it relates to her disability, as to being able to work and engage in the occupation she formerly engaged in?

A. I have to modify the answer to that question, Mr. Commissioner, in this way—she has developed a heart and kidney trouble as a result of anæsthetics, a shock and disturbance of her skin area, showing she has more or less chronic Bright's Disease, which is go-

ing to influence her future vitality and life—she is more or less permanently injured.

Q. Then would you be able to state definitely in relation to the prognosis of her case, in reference to her being able to work at a future time?

A. I would not.

By Mr. Dowling:

Q. She is to all practical purposes permanently disabled?

A. Yes.

Q. Whatever change there may be in her ability to work must be determined in the future, after a considerable length of time, isn't that so?

A. It is problematical.

Q. All these various complications you have described, in
22 your opinion, grew out of this injury and necessary treatment she had to undergo?

A. I hadn't examined Mrs. Vaughan within a number of years before she had this injury; I hadn't examined her immediately before her injury, and to say that the present condition of her heart and arteries and blood vessels and kidneys were due entirely to the injury, I could not say that positively.

Q. From the nature of her injury, and from the treatment she had to undergo, and from the vitality which she displayed in responding to the treatment, could you express an opinion as to whether or not those conditions might have grown out of the injuries received and necessary treatment following?

A. I would say they could have resulted from the injuries and subsequent treatment and anæsthetics she had to go through.

Q. Would you say after having heard Mrs. Vaughan testify that she was in good health and her nervous condition was all right, and from the vitality she displayed in responding to treatment which you gave her, in your opinion, it is probable that these complications did grow out of that?

A. I would not answer that; I don't know.

Q. Whether or not, doctor, the claimant suffered considerable loss of blood as a result of this accident between the time she was injured and before you got the hemorrhage checked?

A. Certainly.

Q. That, of course, would reduce her vitality, would *n*it not?

A. Yes.

Q. Whether or not she suffered a very severe shock, a nervous shock, as the result of the accident?

A. Extreme.

23 Q. Was she unconscious at the time you saw her first?

A. I think she was slightly conscious, but was put under an anæsthetic righ- away. I think she responded to questioning; I think she did before she was anæsthetized.

Q. This skin which you removed, was removed from the lower extremities, from the legs?

A. The upper extremities of both thighs, above the knees.
Q. Whether or not severe permanent scars remain there?
A. Very severe, and of course, permanent.
Q. The removal of that skin and tissue would impair the usefulness of the legs?
A. Not the usefulness of the legs as a moving power so much as the consciousness of constant pathological condition there. Removing a large quantity of skin is hard on the system whether by a burn or not. Lessening the amount of skin surface affects the action of the kidneys. The skin is a third kidney, and if the kidneys with normal functions haven't the skin of the body to help eliminate it is a well known fact that the kidneys are impaired.

By Mr. Dowling:

Q. Could that be considered to be one of the causes for her present kidney trouble?
A. It positively is in my judgment.
Q. Where you took the skin off the legs, does nature replace it?
A. This sort of a graft is different from the ordinary graft which is superficial; this graft goes through to the fat, and nature can't replace it as it was before.

24 By Mr. Foster:

Q. Nature can to a certain extent?
A. No.
Q. How long was this patient in the hospital?
A. Over 20 weeks, from April to some time in September.
Q. Considering the seriousness of the injury, do you think she is making a remarkable recovery?
A. To the present time.
Q. You consider that her condition will improve?
A. I hope so.

To Claimant:

Q. Does your husband work?
A. Yes.
Q. Is he in good health?
A. Yes.
Q. And works regularly?
A. Yes.
Q. Do you own your own home?
A. No.
Q. You rent it?
A. Yes.
Q. Have you any money in the bank?
A. A little towards a home.
Q. What is your present age?
A. Born in 1868.

By Deputy Commissioner Richards: We will carry claimant on disablity. After that time we will take up the question of serious facial and head disfigurement, and make her an award on that basis.

Q. Where have you been getting your compensation?
A. Through Mr. Clark.
Q. You get it every week?
A. I used to get it every Thursday morning.

By Deputy Commissioner Richards: Carrier is paying regularly. Direct Carrier to continue paying during disability. At the expiration of disability or at any time agreeable to both claimant and carrier, the question of adjustment can be taken up and considered.

Notice of Award.

Nov. 14, 1917.

Claim No. 35470.—Eliz. Vaughan.

To Mrs. Elizabeth Vaughan, 716 Noyes St., Utica, N. Y.; Ætna Life Insurance Co., First National Bank Bldg., Syracuse, N. Y.; Clark Knitting Co., Inc., Employers, Utica, N. Y.:

On November 14th, 1917, a special hearing of the above claim was held at the Court House, Utica, N. Y., before Deputy Commissioner W. C. Richards. There appeared at the hearing:

Mr. W. H. Foster represented the Carrier.

Mrs. Elizabeth Vaughan, Claimant.

Carrier is paying regularly. Direct Carrier to continue paying during disability. At the expiration of disability or at any time agreeable to both claimant and Carrier, the question of adjustment can be taken up and considered.

This notice is sent you pursuant to Sections 20 and 23 of the Compensation Law,

Very truly yours,

STATE INDUSTRIAL COMMISSION,
—— ——, *Deputy Commissioner.*

W. C. R./H.

Hearing Jan. 31, 1918, *Before Commissioners Louis Wiard and James M. Lynch.*

Claim No. 35470.

Employee, Elizabeth Vaughan.

Employer, Clark Knitting Co.

Carrier, Ætna Life Insurance Co.

Special Hearing held at the Cahill Bldg., Syracuse, N. Y., January 31, 1918.

Appearances:

Mrs. Elizabeth Vaughan, Claimant.
Mr. W. F. Dowling, Attorney for Claimant.
Mr. Wm. H. Foster, Attorney for Carrier.
M. F. Quinlan, Hearing Stenographer.

Mrs. ELIZABETH VAUGHAN:

By Commissioner Lynch:

Q. Where did the accident occur?
A. At the Knitting Mill in Utica.
Q. What happened?
A. I had my scalp torn off.
Q. How old are you?
A. 46.
Q. Married.
A. Yes.

What have you in mind, Mr. Dowling?

By Mr. Dowling: It seems to me we ought to have pretty near full amount. This woman is a young woman.

By Mr. Foster: How are you going to make an award without having it concurrent. We are paying compensation for disability. There is no doubt in my mind that this woman is not able to go back to work. We are paying compensation.

27 By Commissioner Lynch: What has an award for disfigurement got to do with disability?

By Mr. Foster: That is the question. If it is a concurrent award it cannot be made.

By Mr. Lynch: What effect would a concurrent award have in a case like this? For instance, you are liable to this claimant for some amount that you have got to pay. It does not make any difference so far as disability is concerned.

By Commissioner Wiard: If there were two thumbs off, you would not have to pay for both at the same time. You would pay for one and then go on after and pay for the other. Here you have disfigurement which you have got to pay for in addition.

By Mr. Foster: My contention is that it was put in the law to take care of certain cases which were not taken care of under the original law, you had specific injuries and disability, but there might be a case where disfigurement would diminish or impair their earning capacity.

I do not know whether you are familiar with the case of Erickson vs. Preuss. It is a case which I argued in the Appellate Division last term, only a couple of weeks ago. It is a case where a woman working in a laundry had her scalp torn off. What the Appellate Division are going to do, I do not know. It does not seem to

28 me that it is supposed to be double indemnity. I hold that the theory of the law is based on loss of wages due to injuries received as a result of industrial occupation.

By Commissioner Wiard: Do I understand that you are paying compensation now?

By Mr. Foster: I am. I am not contending that this woman is able to work. I do not think any woman who has gone through what this woman has could go back to work at the present time.

By Commissioner Wiard to Claimant: How long ago was your accident?

By Mrs. Elizabeth Vaughan: April 9th. I was in the hospital until September.

By Commissioner Wiard: There will come a time when she is going to be able to work and, if I am right on the position I have taken—I am not saying I am right on the position I have taken, I may be wrong, but if I am right—when she is able to return to work her disability ceases and the award for disfigurement begins.

By Mr. Dowling: Dr. Grant, who took care of this woman, says she will never be able to work again. When her scalp was torn off, it was torn down to the bone so that it was necessary to graft flesh and skin from her legs. There were 525 pieces removed with the result that her kidneys are affected. A substantial portion of the skin has ben removed and the functions of the kidneys interferred with. Of course she had a terrific shock. I think Dr. Grant has testi-
29 fied that she is undoubtedly permanently disabled. He has examined her since and I think he still adheres to that opinion.

By Mr. Foster: It seems to me we had better continue paying compensation and take that question up later.

By Mr. Dowling: I think there is no doubt but that this is total disability.

By Mr. Foster: It seems to me that the theory of the Compensation Law is for the loss of being able to labor.

By Commissioner Lynch: The Carrier is directed to continue paying compensation during disability. The matter of facial disfigurement will be brought up when disability ceases.

By Mr. Dowling: When this accident happened, the employer sent her to the hospital and had them give her the best room in the house. She continued in that room. She did not understand the law. She understood that the carrier was to pay all those bills. If the bills are approved as given, it involves her with a very large bill, something over $800.

Mr. Clark, the head of the knitting mill where she worked, said that of course he did not believe the company was liable for these hospital bills, but he thought they ought to be adjusted by the carrier because they were ordered in good faith. It puts us in the
30 situation where this lady went in there with the understanding that the carrier or the employer would stand the bill.

By Mr. Foster: You do not know that Dr. Grant did not understand that under the law the carrier paid for only the first sixty days.

By Commissioner Lynch: If it had been a question of getting this woman back to work, Mr. Foster, you would have gotten this woman there.

By Mr. Dowling: This woman was in such a condition that it was

necessary to keep her in a large airy room, because of the frequent dressings she had to be absolutely quiet and get the best of air and sunshine. There were days and days when she was not expected to live.

By Deputy Commissioner Richards: If the carrier stands on the technical ground of sixty day period then the bills involve this claimant. That would leave a balance of $800. This woman is drawing only $7.69.

By Commissioner Lynch: I think the question would then arise as to the power of the Commission to make an award against the employer. This claimant did not engage the room.

By Commissioner Wiard: The medical and hospital bills will be taken up at a special hearing in Utica before Deputy Commis-
31 sioner Richards. All parties to be notified. Employer and carrier should be at the hearing.

By Mr. Dowling: I assume that if this case which Mr. Foster has in court is decided against him that the claimant is entitled to an award for facial disfigurement and your decision can be modified.

By Mr. Foster: If this is a case of total disability; the case that is now in the Appellate Division is not on all fours.

By Commissioner Wiard: Dr. Grant, the question was raised as to whether or not you knew of the provision of sixty day period allowance of hospital and medical bills. The whole matter has been referred for a special hearing in Utica with the idea of having Commissioner Richards write a letter to the employer setting forth the facts, that this woman would have to meet about $800.00 for medical bills, and to ascertain whether or not he did not feel obligated inasmuch as the information we have is to the effect that at the time of the accident he called the hospital and told them to give this woman the best possible treatment and also the best room in the house.

Dr. A. R. Grant: That is true, sir. He would be very glad to assume that I am sure. I understand he has been advised not to pay any attention to his natural sympathetic bend.

By Commissioner Wiard: This is a sympathetic case. She
32 had a frightful injury. We cannot give her anything for facial disfigurement so long as she is disabled. If she is able to go to work, and goes to work, then we can award her as much as $3,500.00 which the Commission probably would.

By Commissioner Lynch:

Q. What do you think of her ever being able to work, Dr. Grant?

A. She will never be able to. She is intensely nervous. If her work is light she would be able to live at home. She should not do any regular intensive work. Her kidneys show no albumen. The nervous system, which is really the driving power, is considerably impaired and I think permanently so. She may be able to work a few days at a time but so far as working regularly, I do not think she can.

By Deputy Commissioner Richards: The only thing is whether

or not she would be benefited more by an award for serious facial disfigurement than on permanent disability.

By Dr. Grant: She will have to be under continued observation. A lot of that bone is bare. Mr. Clark has not paid any money yet. He will do anything you gentlemen suggest to settle this. I think he would make a requisition on his finances.

By Commissioner Wiard: We also want to get to the point of the question of reasonableness of the hospital and doctor's bills.

By Dr. Grant: The operation proper—I was called at about 7 o'clock in the morning and worked constantly until along in
33 the afternoon. Her ears were hanging down. Her life was dispaired of for days and days. That $100.00 represents one day's constant attendance. She was on the table over two hours. I should have charged $500.00. The charges of $25.00 for grafting are minor and I do not think they should be cut down. The ordinary skin graft is a thin graft just scaled off. These grafts, to make a scalp, had to be full thickness down to the fat. In ordinary burns we can graft with a thin layer. It was a labor-ous process. I think we put on 70, 80, 90 to 110 pieces at each sitting—as much as she was able to stand and as much area as we could cover. It is a great responsibility—like taking out a stomach. For the same time and for an operation that required equal surgical skill, I would have charged $100.00 every time I did that. You understand these slippery little pieces were put on the skull which was slippery like glass or ice. It was on the head and the patient was so very ill she could not sit up. The least touch would spoil it all. It could not be covered with bandages, that destroys the ability of the graft to take. You cannot sew it. There must not be a drop of blood. You can see how important the nurses were and the dressings. It was very important to keep the patient from rolling her head. She was very near exhausted and very weak. If she moved her head, it pushed the ends up and spoiled it all. It meant constant supervision in our efforts to have her at rest. She had to have the best and we were careful of giving it to her and did give it to her regardless of
34 the Commission. The expenses are trifling considering the attention given her by myself and the hospital attendants. She had to have a private room. In a ward, friends coming to visit other patients would have disturbed her.

By Deputy Commissioner Richards: At this hearing in Utica at which time you are going to get the employer in there, supposing he does not consent to go beyond the sixty days and the carrier does not go beyond the sixty days, you should have your bills passed upon for payment by the claimant. I think the Commission will concede that your bills are reasonable.

Notice of Award.

Feb. 2, 1918.

Claim 35470—Elizabeth Vaughan.

To Clark Knitting Co., Inc., Utica, N. Y.; Mrs. Elizabeth Vaughan, 716 Noyes St., Utica, N. Y.; Ætna Life Insurance Co., Union Bldg., Syracuse, N. Y.:

On January 31, 1918, a special hearing of the above claim was held at the Cahill Bldg., Syracuse, N. Y., before Commissioners Wiard and Lynch. There appeared at the hearing:

Mrs. Elizabeth Vaughan, Claimant.
Mr. W. F. Dowling, Attorney for Claimant.
Mr. W. H. Foster, Attorney for Carrier.
Dr. A. R. Grant, Attending Physician.

35 The carrier is directed to continue paying compensation during disability. The matter of facial disfigurement will be brought up when disability ceases.

The medical and hospital bills to be taken up at a special hearing in Utica before Deputy Commissioner Richards. All parties to be notified. Employer and carrier should be at the hearing.

This notice is sent you pursuant to Sections 20 and 23 of the Compensation Law.

Very truly yours,

STATE INDUSTRIAL COMMISSION.
W. C. RICHARDS,
Deputy Commissioner.

W. C. R./M. F. Q.

Hearing May 23, 1918, *Before Commissioner James M. Lynch.*

Claim No. 35470.

Employee, Elizabeth Vaughan.

Employer, Clark Knitting Co.

Carrier, Ætna Life Insurance Co.

Special Hearing held at the Cahill Bldg., Syracuse, N. Y., May 23, 1918.

Appearances:

Mrs. Elizabeth Vaughan, Claimant.
Mr. W. F. Dowling, Attorney for Claimant.
Mr. W. H. Foster, Attorney for Carrier.
M. F. Quinlan, Hearing Stenographer.

Commissioner Lynch to Mrs. Vaughan: Do I understand that you are still drawing compensation?

36 By Mrs. Vaughan: Up until two weeks ago. May 6th was the last I got.

Commissioner Lynch to Mr. Foster: Now, Mr. Foster, how about these medical bills?

By Mr. Foster: I do not see why we should pay these bills beyond the sixty day period. They are very big bills even for just the first sixty days.

By Mr. Dowling: For the first sixty days the hospital bills were $329.95. The balance of the hospital bill was $440.08. This woman was in a very serious condition and she had to have a special room.

By Commissioner Lynch: It seems to me that if somebody besides the claimant would take this up there might be a considerable reduction in these bills.

By Mr. Foster: I took that up with Dr. Grant. He seems to think the bill is all right. We make no question on the payment of the wig.

Superintendent of the Utica Homeopathic Hospital:

By Commissioner Lynch:

Q. Mr. Foster has raised the question as to the price of the room occupied by Mrs. Vaughan.

A. It was a corner room. I think that is a very reasonable price for a room of that size and convenience. It was considered necessary for her to have such a room. Of course that is not for us
37 to say, it is for the doctor to decide what kind of a room she should have.

By Mr. Dowling: Mr. Clark, the head of the knitting company, ordered that she have the best in the house and aside from that she was in such a serious condition that Dr. Grant ordered that she have a quiet and airy room.

By Commissioner Lynch: I am not raising the question but what she should have had the very best attention.

By Mr. Foster: The question I raise is that in other cities, even in New York, they do not charge $30 a week for rooms.

By Superintendent of Hospital: It is the usual charge for that room.

By Commissioner Lynch: All I can do is to make an award for medical attention and appliances and hospital bills for the first sixty days. Dr. Grant said if it was not paid otherwise that your employer would pay the charge. Do you know anything about that, Mrs. Vaughan?

By Mrs. Vaughan: Only what they said here that day. My husband went down to see Mr. Clark about having me moved to another room and he said I could not be removed.

By Mr. Dowling: Mr. Clark told me that he expected the carrier to pay the entire bill.

38 By Commissioner Lynch: He may expect him to but there is no legal obligation.

An award is made for Three Thousand, Five Hundred Dollars, $3,500.00, for facial disfigurement on the decision of the Court of Appeals in the case of Erickson vs. Preuss. The carrier is directed to pay this amount in one check and to continue payments for disability. Carrier is also directed to pay medical and hospital bills as approved for the first sixty days.

By Mr. Foster: I object to the making of any award on the ground that the amendment to Subdivision 3 of Section 15 of Chapter 622 of the Laws of 1916, providing for serious facial disfigurement is unconstitutional in that it assesses damages without the right of a trial by jury in addition to providing compensation for disability.

2nd. It is unconstitutional in that it is contrary to the Constitution of the United States and to the Constitution of the State of New York in that it takes property without due process of law.

3rd. The Compensation Law of the State of New York being a compulsory act, compensation cannot be awarded for disability and additional compensation for damages for disfigurement in violation of the Constitution of the United States and the Constitution of the State of New York.

4th. Chapter 622 of the Laws of 1916 added to Section 15, Subdivision 3 of the workmen's Compensation Law of the State of New York is unconstitutional and void.

39 By Commissioner Lynch: Attorney's fee approved at $100.00.

Notice of Award.

June 12, 1918.

Claim 35470—Elizabeth Vaughan.

To Mrs. Elizabeth Vaughan, 716 Noyes St., Utica, N. Y.; Clark Knitting Co., Utica, N. Y.; Ætna Life Insurance Co., Union Bldg., Syracuse, N. Y.:

A special hearing of the above case was held at the Cahill Bldg., Syracuse, N. Y., on May 23, 1918, before Commissioner James M. Lynch. There appeared at the hearing:

Mrs. Elizabeth Vaughan, Claimant.

Mr. W. F. Dowling, Attorney for Claimant.

Mr. W. H. Foster, Attorney for Carrier.

An award was made for Three Thousand, Five Hundred Dollars, $3,500.00, for facial disfigurement on the decision of the Court of Appeals in the case of Erickson vs. Preuss. The carrier was directed to pay this amount in one check and to continue payments for disability. Carrier was also directed to pay medical and hospital bills as approved for the first sixty days. Claimant's attorney's fee was approved at $100.00.

This notice is sent you pursuant to Sections 20 and 23 of the Compensation Law.

STATE INDUSTRIAL COMMISSION.
JAMES M. LYNCH,
Commissioner.

J. M. L./M. F. Q.

40 *Conclusions of Fact, Ruling of Law, Award, and Decision.*

State Industrial Commission.

Claim No. 35470.

In the Matter of the Claim for Compensation, under the Workmen's Compensation Law, Made by ELIZABETH VAUGHAN

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier.

On April 9, 1917, Elizabeth Vaughan received her injuries. Thereafter this claim came on for hearing on September 20, 1917, at Syracuse, New York, and on November 14, 1917, at Utica, New York. At the hearing held on September 20, 1917, an award of compensation was made to the claimant at the rate of $7.69 weekly to be continued during the disability suffered by the claimant. At the hearing held on November 14, 1917, it appeared that compensation was being regularly paid to the claimant. Further hearing was held at Syracuse, New York, on January 31, 1918, to consider the facial and head disfigurement, at which time the employer and insurance carrier were directed to continue the payments of com-
41 pensation to the claimant during disability. Further hearing was held on May 23, 1918, at Syracuse, New York, on which date an award was made for $3,500.00 for serious facial and head disfigurement, based on the decision of the Court of Appeals in the case of Erickson vs. Preuss. In objecting to the award for serious facial and head disfigurement, the attorney for the employer and insurance carrier raised the question of the constitutionality of Subdivision 3 of Section 15 of the Workmen's Compensation Law under which the award was made.

Appearances:

Robert W. Bonynge, Esq., Counsel to State Industrial Commission.
William H. Foster, Esq., Attorney for Employer and Insurance Carrier.
W. F. Dowling, Esq., Attorney for Claimant.

All the evidence submitted before the Commission having been heard and duly considered, the Commission makes its Conclusions of Fact, Ruling of Law, Award and Decision, as follows:

Conclusions of Fact.

1. On April 9, 1917, the day when Elizabeth Vaughan received her injuries, she resided at No. 716 Noyes Street, Utica, New York, and was employed by Clark Knitting Co., Inc., engaged in the manufacture of knit underwear, with a plant or place of business located at No. 405 Washington Street, Utica, New York. Elizabeth
42 Vaughan was employed as a neck cutter in the operation of a machine in the finishing department.

2. On said date, Elizabeth Vaughan was working for her employer at her employer's plant, and while engaged in the regular course of her employment, in stooping to procure a screw belonging to the bar of a machine operated by another employee, her hair was caught in a revolving shaft, which removed the scalp from hair line over frontal area to the seventh vertebra behind the ears, and which said injuries disabled her from the date of said accident to May 23, 1918, and on that date she was still disabled.

The injuries received by Elizabeth Vaughan on said date also resulted in serious facial and head disfigurement.

3. The average weekly wage of Elizabeth Vaughan was the sum of $11.54.

4. The injuries sustained by Elizabeth Vaughan were accidental injuries, and arose out of and in the course of her employment.

5. It does not appear whether written notice was given to the employer within ten days after disability, but it has not been established as a fact that such written notice was not given, and it is, therefore, presumed under Section 21 of the Compensation Law, that sufficient notice was given. On the other hand, neither employer nor insurance carrier was prejudiced by the failure, if any, to give written notice of injury within ten days after disability.

43

Ruling of Law.

This claim comes within the provisions of Chapter 67 of the Consolidated Laws, being Chapter 816 of the Laws of 1913, as reenacted and amended by Chapter 41 of the Laws of 1914, and amended by Chapter 316 of the Laws of 1914, and as further amended by the Laws of 1915 and 1916, known as the Workmen's Compensation Law.

Award.

Award of compensation is hereby made against Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, to Elizabeth Vaughan, injured employee, in the sum of $3,500.00 on account of and in view of the serious facial and head disfigurement resulting from the injuries sustained on April 9, 1917; and this claim is hereby continued for further hearing to determine the extent of disability resulting from said accident; the fee of W. F. Dowling, Esq., attorney for claimant, is approved in the sum of $100.00, which is to be made a lien on this award.

Decision.

It is presumed under Section 21 of the Compensation Law that sufficient notice of injury was given to employer. On the other hand, the failure, if any, to give written notice of injury to the employer within ten days after disability is hereby excused on
44 the ground that neither employer nor insurance carrier was prejudiced by such failure, if any.

Dated May 23, 1918.

STATE INDUSTRIAL COMMISSION.
EDW. P. LYON,
Vice-Chairman;
HENRY D. SAYER,
JAMES M. LYNCH,
Commissioners.

Affidavit of No Opinion.

Supreme Court, Appellate Division, Third Department.

Before State Industrial Commission.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
County of Onondaga, City of Syracuse, ss:

Charles H. Goebel, being duly sworn, deposes and says that he is a clerk in the law office of William H. Foster, attorney for
45 the defendants-appellants herein, and is familiar with this file; that no opinion was rendered by the State Industrial Commission in making the award of compensation herein.

CHARLES H. GOEBEL.

Sworn to before me this 20th day of August, 1918.

F. I. OLMSTEAD,
Notary Public.

Certification of Record.

I, William S. Coffey, Secretary of the State Industrial Commission, do hereby certify that I have compared the foregoing papers, except the Statement under Rule 41, with the respective originals thereof on file in the office of the State Industrial Commission, and

that the same are true and correct copies of said originals and of the whole thereof, and that said papers constituted all of the papers and proceedings herein, including the evidence, which were before said State Industrial Commission in relation to the foregoing claim.

In Witness Whereof, I have hereunto set my hand and the official seal of the State Industrial Commission, on the 20th day of August, 1918.

W. S. COFFEY,
Secretary State Industrial Commission.

46 *Order Settling Case.*

It is hereby ordered that the foregoing case which contains all the evidence introduced at the hearing of this claim, except that stipulated by the parties to be omitted, be and the same hereby is settled as the case herein.

Dated, New York, August 20, 1918.

EDWARD P. LYON,
Vice Chairman State Industrial Commission.

47 *Order of Affirmance.*

At a Term of the Appellate Division of the Supreme Court in and for the Third Department, Held at the Court-house, in the City of Albany, N. Y., Commencing on the 12th Day of November, 1918.

Present: Hon. John M. Kellogg, Presiding Justice; Hon. George F. Lyon, Hon. John Woodward, Hon. A. V. S. Cochrane, Hon. Henry T. Kellogg, Associate Justices.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law,

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

The above-named Clark Knitting Co., Inc., and Ætna Life Insurance Company having appealed from the award of the State Industrial Commission entered in the office of said Commission on the 23rd day of May, 1918, whereby compensation was awarded to the above-named Elizabeth Vaughn, injured employee, in the
48 sum of $3,500.00 on account of and in view of the serious facial and head disfigurement resulting from the injuries sustained on April 9, 1917; and this claim is hereby continued for further hearing to determine the extent of disability resulting from said accident; the fee of W. F. Dowling, Esq., attorney for claimant, is approved in the sum of $100.00, which is to be made a lien on this

award; and said appeal having come on to be heard in this court, and having been argued by William H. Foster, Esq., of counsel for the appellants, and E. C. Aiken, Deputy Attorney General, for the State Industrial Commission, and due deliberation having been had thereon.

Now, on motion of Merton E. Lewis, Attorney General, attorney for the State Industrial Commission, it is;

Ordered, That said award of the State Industrial Commission appealed from be and the same is hereby unanimously affirmed.

[L. S.] JOSEPH H. HOLLANDS, *Clerk.*

49 *Order of the Commission.*

Before State Industrial Commission.

In the Matter of the Claim of ELIZABETH VAUGHN for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier.

The above named Clark Knitting Co., Inc., employer, and Ætna Life Insurance Company, insurance carrier, having appealed to the Appellate Division of the Supreme Court in and for the Third Judicial Department, from the award and decision of the State Industrial Commission, made and entered herein on the 23rd day of May, 1918, whereby compensation was awarded the above named Elizabeth Vaughn, in the sum of $3,500, on account of and in view of the serious facial and head disfigurement resulting from injuries sustained on April 9, 1917; to W. F. Dowling, Esq., attorney for claimant, $100.00 the amount of his fee; and the case continued for further hearing; and said appeal having been duly heard by said Court, and the Appellate Division of the Supreme Court having at a term thereof commencing on the 12th day of November, 1918,

50 unanimously affirmed the award and decision heretofore made by the State Industrial Commission, and the papers on appeal herein together with a certified copy of the said order of the Appellate Division having been duly filed; it is

Ordered, That the order of the Appellate Division be and the same hereby is made the order of the State Industrial Commission, and the award heretofore made herein be and the same hereby is affirmed with interest from May 23, 1918, and the case set for further hearing on the 2nd day of December, 1918.

Dated, New York, November 25, 1918.

W. S. COFFEY, *Secretary.*

Notice of Appeal.

Court of Appeals, State of New York.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

vs.

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

SIRS: Please take notice that Clark Knitting Company, Inc., Employer, and Ætna Life Insurance Company, Insurance Car-
51 rier, hereby appeal to the Court of Appeals from the judgment and order of affirmance in the Supreme Court, Appellate Division, Third Department, entered in the office of the clerk of the Appellate Division, Third Department, on the 19th day of November, 1918, and also from the order of the State Industrial Commission dated November 25, 1918, and from each and every part of said orders.

Dated Syracuse, N. Y., Dec. 16, 1918.

Yours, etc.,

WILLIAM H. FOSTER,
Attorney for Appellants.

Office & P. O. Address, Union Building, Syracuse, N. Y.

To R. M. Barber, Clerk Court of Appeals, Albany, N. Y.; Joseph H. Hollands, Clerk Supreme Court, Appellate Division, Third Department, Albany, N. Y.; Merton E. Lewis, Attorney General, The Capitol, Albany, N. Y.; Robert W. Bonynge, Counsel State Industrial Commission, 230 Fifth Ave., New York City; Elizabeth Vaughn, Claimant, 716 Noyes Ave., Utica, N. Y.

52 *Affidavit of No Opinion.*

Court of Appeals, State of New York.

Before State Industrial Commission.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
County of Onondaga, City of Syracuse, ss:

Charles H. Goebel, being duly sworn, deposes and says that he is a clerk in the law office of William H. Foster, attorney for the defendants-appellants herein, and is familiar with this file; that no opinion was rendered by the Appellate Division in affirming the award of compensation herein.

CHARLES H. GOEBEL.

Sworn to before me this — day of Dec., 1918.

F. I. OLMSTEAD,
Notary Public.

53 *Certification of Record.*

I, William S. Coffey, Secretary of the State Industrial Commission, do hereby certify that I have compared the foregoing papers, except the statement under rule 41, with the respective originals thereof on file in the office of the State Industrial Commission, and that the same are true and correct copies of said originals and of the whole thereof, and that said papers constituted all of the papers and proceedings herein, including the evidence, which were before said State Industrial Commission in relation to the foregoing claim.

In witness whereof, I have hereunto set my hand and the official seal of the State Industrial Commission on the — of December, 1918.

W. S. COFFEY,
Secretary State Industrial Commission.

Order Settling Case.

It is hereby ordered that the foregoing case, which contains all the evidence introduced at the hearing of this claim, except that stipulated by the parties to be omitted, be and the same hereby is settled as the case herein.

Dated New York, December —, 1918.

EDWARD P. LYON,
Vice Chairman State Industrial Commission.

54 STATE OF NEW YORK, *ss.*:

Court of Appeals.

Pleas in the Court of Appeals, Held at Court of Appeals Hall, in the City of Albany, on the 8th Day of April, in the Year of Our Lord One Thousand Nine Hundred and Nineteen, Before the Judges of said Court.

Witness, The Hon. Frank H. Hiscock, Chief Judge, presiding.
R. M. BARBER, *Clerk.*

Remittitur, April 9th, 1919.

In the Matter of the Claim of ELIZABETH VAUGHN for Compensation, &c.

Be it remembered, that on the 28th day of December, in the year of our Lord one thousand nine hundred and eighteen, Clark Knitting Company, Employer & ano. the appellants in this cause, came here into the Court of Appeals, by William H. Foster, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And State Industrial Commission, the respondent in said cause, afterwards appeared in said Court of Appeals by Merton E. Lewis, Attorney General, which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

55 Whereupon, the said Court of Appeals having heard this cause argued by Mr. William H. Foster, of counsel for the appellant, and by Mr. E. C. Aiken, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be, and the same hereby is affirmed with costs, on authority of Matter of Sweeting v. American Knife Co. &c., decided herewith.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, with costs &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division, Third Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office.

Albany, April 9, 1919.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.] R. M. BARBER, *Clerk.*

56 At a Term of the Appellate Division of the Supreme Court in and for the Third Judicial Department, Held at the Court-house, in the City of Albany, N. Y., Commencing on the 6th Day of May, 1919.

Present: Hon. John M. Kellogg, Presiding Justice; Hon. George F. Lyon, Hon. John Woodward, Hon. A. V. S. Cochrane, Hon. Henry T. Kellogg, Associate Justices.

In the Matter of the Claim of ELIZABETH VAUGHN for Compensation under the Workmen's Compensation Law against CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Appellants.

The above named Clark Knitting Co., Inc., and Ætna Life Insurance Company having appealed from the order of the Appellate Division of the Supreme Court, in and for the Third Judicial Department, made at a Term commencing on the 12th day of November, 1918, which affirmed an award of the State Industrial Commission entered in the office of said Commission on the 23rd day of May, 1918, whereby compensation was awarded to the above named Elizabeth Vaughn, injured employee, in the sum of $3500.00 on account of and in view of the serious facial and head disfigurement resulting from the injuries sustained on April 9, 1917, against which award for facial and head disfigurement appellants, when this cause was before this Court, contended that to make said award would be tantamount to making an award, not for loss of earning power, but for damages, and would, therefore, take the property of appel-
57 lants without due process of law, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States; and the claim is hereby continued for further hearing to determine the extent of disability resulting from said accident; the fee of W. F. Dowling, Esq., attorney for claimant, is approved in the sum of $100.00, which is to be made a lien on this award; and said appeal having been argued in the Court of Appeals by William H. Foster, Esq., of counsel for the appellants, and E. C. Aiken, Deputy Attorney General, for the State Industrial Commission, and the Court of Appeals after due deliberation had thereon did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from be affirmed with costs; and further ordered that the record and proceedings be remitted to the Appellate

Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law; and the said remittitur having been filed in this Court,

Now, on motion of Charles D. Newton, Attorney General, attorney for the State Industrial Commission, it is

Ordered that the order and judgment of the Court of Appeals, be and the same is hereby made the order of this Court, and that the award or decision of the State Industrial Commission entered on the 23rd day of May, 1918, be and the same is hereby in all respects affirmed with $99.50 costs to be paid by the appellants.

JOSEPH H. HOLLANDS, *Clerk.*

58 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

It is hereby stipulated by and between the attorneys for the respective parties hereto, pursuant to Rule 8 of the Supreme Court of the United States, that the following portions of the record shall constitute the transcript of record on writ of error from the Supreme Court of the United States, and that the Clerk shall transmit to the Clerk of the Supreme Court of the United States only the papers herein designated as follows:

Statement under Rule 41;
Notice of Appeal to Appellate Division;
Employer's first Report of Injury;
Attending Physician's Report;
Employee's Claim for Compensation;
Notice of Award;
Minutes of Hearing at Utica, November 14, 1917;
Notice of Award;
Minutes of Hearing at Syracuse, January 31, 1918;
Notice of Award;
Minutes of Hearing, Syracuse, May 23, 1918;
Notice of Award;
59 Conclusions of Fact, Ruling of Law, Award and Decision;
Affidavit of No Opinion by Commission;
Certification of Record to Appellate Division;
Order Settling Case;
Order of Affirmance by Appellate Division;
Order of the Commission thereon;
Notice of Appeal to Court of Appeals;
Affidavit of No Opinion by Appellate Division;
Certification of Record to Court of Appeals;
Order Settling Case;
Judgment of the Court of Appeals;

Order of Appellate Division entered on Judgment of Court of Appeals.
Dated May 19th, 1919.

WILLIAM H. FOSTER,
Attorney for Appellants.
CHARLES D. NEWTON,
(E. C. A.),
Attorney General of the State of New York, Attorney for Respondent.

60 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the Matter of the Claim of Elizabeth Vaughn, Claimant-Respondent, against Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Stipulation pursuant to Rule 8 of the U. S. Supreme Court. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

61 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
Third Judicial Department, ss:

I, Joseph H. Hollands, Clerk of the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York; do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Elizabeth Vaughn, claimant-respondent, against Clark Knitting Co., Inc., employer, and Ætna Life Insurance Company, insurance carrier, defendants-appellants, as set forth in the annexed stipulation bearing date May 19th, 1919, and made pusuant to Rule 8 of the Supreme Court of the United States between the attorneys for the respective parties hereto, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Albany, State of New York, this 19th day of May, 1919.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York.

62 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the Matter of the Claim of Elizabeth Vaughn, Claimant-Respondent, against Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Authentication of Record. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

33 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

In obedience to the commands of the writ of error herein allowed May 14th, 1919, I herewith transmit to the Supreme Court of the United States a duly certified transcript of such portion of the record and proceedings in the above entitled cause as, in pursuance of Rule 8 of the Supreme Court of the United States, the attorneys for the respective parteis hereto have by stipulation designated, with all things concerning the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Albany, State of New York, this 19th day of May, 1919.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York.

64 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the Matter of the Claim of Elizabeth Vaughn, Claimant-Respondent, against Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Return to Writ of Error. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

65 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of ELIZABETH VAUGHN, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLARK KNITTING CO., INC., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
Third Judicial Department, ss:

I, Joseph H. Hollands, Clerk of the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, do hereby certify that there have been lodged with me, as such Clerk, this day, in the above entitled cause:

1. The original bond, of which a copy is hereto annexed;
2. Two copies of the writ of error as herein set forth, one for the defendant in error above and one to file in my office;
3. One copy of the prayer for reversal, petition and assignment of errors herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Albany, State of New York, this 19th day of May, 1919.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York.

66 Supreme Court of the United States.

CLARK KNITTING COMPANY, INC., and ÆTNA LIFE INSURANCE COMPANY, Plaintiff'-in-error,

against

ELIZABETH VAUGHN, Defendant-in-error.

Know all men by these presents, that the Ætna Casualty and Surety Company of Hartford, Connecticut, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and having its principal business at Hartford, Connecticut, duly authorized to transact business in the State of New York, and having an office for that purpose in the City of Syracuse, N. Y., is held and firmly bound unto Elizabeth Vaughn in the sum of Five Thousand ($5000.00) Dollars lawful money of the United States, to be paid to said Elizabeth Vaughn, her executors, administrators and

assigns, for which payment well and truly to be made, the said Ætna Casualty and Surety Company of Hartford, Connecticut, binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the seal of the Ætna Casualty and Surety Company and dated this 29th day of Apr., 1919.

Now, whereas, the above named the Clark Knitting Company, Inc., Employer, and the Ætna Life Insurance Company, Insurance Carrier, are prosecuting a writ of error to the Supreme Court of the United States to reverse the order of the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York entered on the 29th day of Apr., 1919, whereby a judgment of the Court of Appeals of the State of New York, rendered April 8th, 1919, was made the judgment of said Appellate Division, a reversal of which judgment is likewise sought,

Now, therefore, the condition of this obligation is such that if the above named Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, shall prosecute their said writ to effect and, if they fail to make good their plea, shall answer all damages and costs, then this obligation shall be void, otherwise to remain in full force and virtue.

ÆTNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONN.,
By B. E. WATSON,
Resident Vice-President. [L. S.]

Attest:
[L. S.] GEORGE J. KESEL,
Resident Assistant Secretary.

Approved this 14th day of May, 1919, to act as a supersedeas.
LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

67 STATE OF NEW YORK,
County of Onondaga, ss:

On this 29th day of April, 1919, before me personally came B. E. Watson, to me known, who, being by me duly sworn, did depose and say: That he resides in the City of Syracuse, New York; that he is Resident Vice-President of The Ætna Casualty and Surety Company, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; that he signed his name thereto by like order; that he is acquainted with George J. Kesel; that he knows him to be the Resident Ass't Secretary of said Company; that the signature of said George J. Kesel, subscribed to said instrument, is in the genuine handwriting of said George J. Kesel, and was thereto subscribed by like order of said

Board of Directors, and in the presence of him, the said B. E. Watson.

FRED I. OLMSTEAD,
Notary Public.

At a regular meeting of the Board of Directors of the Company, duly called and held on the 28th day of December, A. D. 1911, the following By-Law was adopted:

Article 8. Resident Officers, Attorneys-in-Fact, and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent, and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the President or any other Officer could bind it; Such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

Section 4. Attorneys-in-Fact may, subject to the provisions and limits named in their certificate of authority, execute and deliver and attach the seal of the Company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and any such instrument executed by any such Attorney-in-Fact when attested by any other Attorney-in-Fact shall be as binding upon the Company as if signed, sealed, and attested by any Officer of the Company.

STATE OF CONNECTICUT,
County of Hartford, ss:

I, D. G. Stone, — of The Ætna Casualty and Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do hereby

certify that the same is a true and correct transcript therefrom, and of the whole of said original By-Law.

Given under my hand and the seal of the Company, at Hartford, Conn., this 23rd day of September 1918.

[Seal the Ætna Casualty and Surety Company, Hartford, Conn.]

D. G. STONE, *Secretary.*

68 The Ætna Casualty and Surety Company, Hartford, Connecticut.

ÆTNA.

Certificate of Authority of Resident Assistant Secretary.

Know all men by these presents that George J. Kesel has been and is hereby appointed Resident Assistant Secretary of The Ætna Casualty and Surety Company, of Hartford, Connecticut, at Syracuse, New York, and as such Resident Assistant Secretary has power and authority to affix the seal of the Company to, and attest on behalf of the Company, any and all bonds and undertakings, and all bonds and undertakings sealed and attested by him, when signed by a duly appointed Resident Vice-President, shall be as valid and binding upon the Company as if said bonds and undertakings had been sealed and attested by the Secretary.

This appointment is made under and by authority of the following By-Law adopted by the Board of Directors of the Company at a meeting duly called and held on the 28th day of December, 1911.

Article 8. Resident Officers, Attorneys-in-fact, and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-fact and Agents to represent and act for and on behalf of the company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent and revoke the power and authority given him.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

In witness whereof, the Ætna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 15th day of May, A. D. 1919.

THE ÆTNA CASUALTY AND SURETY COMPANY,
By D. N. GAGE, *Secretary.*

STATE OF CONNECTICUT,
County of Hartford, ss:

On this 15th day of May, A. D. 1919, before me personally came D. N. Page, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is the Secretary of the Ætna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

JAMES F. McEVITT,
Notary Public.

My Commission Expires Jan. 31, 191–.

69 The Ætna Casualty and Surety Company, Hartford, Connecticut.

ÆTNA.

Certificate of Authority of Resident Assistant Secretary.

Know all men by these presents that B. E. Watson has been and is hereby appointed Resident Assistant Secretary of The Ætna Casualty and Surety Company, of Hartford, Connecticut, at Syracuse, New York, and as such Resident Assistant Secretary has power and authority to affix the seal of the Company to, and attest on behalf of the Company, any and all bonds and undertakings, and all bonds and undertakings sealed and attested by him, when signed by a duly appointed Resident Vice-President, shall be as valid and binding upon the Company as if said bonds and undertakings had been sealed and attested by the Secretary.

This appointment is made under and by authority of the following By-Law adopted by the Board of Directors of the Company at a meeting duly called and held on the 28th day of December, 1911.

Article 8. Resident Officers, Attorneys-in-fact, and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-fact and Agents to represent and act for and on behalf of the company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any

time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent and revoke the power and authority given him.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

In witness whereof, the Ætna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 26th day of April, A. D. 1919.

THE ÆTNA CASUALTY AND SURETY COMPANY,
By NORMAN C. STEVENS, *Secretary.*

STATE OF CONNECTICUT,
County of Hartford, ss:

On this 26th day of April, A. D. 1919, before me personally came Norman C. Stevens, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is the Secretary of the Ætna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

E. MATHER,
Notary Public.

My Commission Expires Jan. 31, 191-.

70 The Ætna Casualty & Surety Company of Hartford, Connecticut.

Financial Statement as of December 31, 1918.

Assets.

Mortgage Loans	$1,442,100.00
Collateral Loans	605,815.05
Stocks & Bonds	6,591,985.15
Unpaid Premiums Subsequent to October 1, 1918	1,498,223.70
Unpaid Premiums prior to October 1, 1918	84,603.31
Cash in Office & Banks	2,094,271.96
Accrued Interest	131,330.82
All other Assets	290,250.84
Total Assets	12,738,580.83

Deduct Assets not Allowed by Insurance Departments viz.:		
Unpaid Premiums prior to October 1, 1918	84,603.31	
Other Assets	171,826.01	
		256,429.32
Admitted Assets on basis allowed by Insurance Departments		12,482,151.51

Liabilities.

Premium Reserve		$3,496,180.54
Claim Reserve		2,097,002.49
Reserve for Accrued Taxes		368,347.62
Reserve for other Liabilities		368,353.84
Reinsurance in other Cos.		11,559.95
Total Liabilities except Capital		7,241,444.44
Surplus	3,497,136.39	
Less Assets not allowed by Insurance Departments	256,429.32	
Surplus on basis allowed by Insurance Departments	3,240,707.07	
Capital Stock	2,000,000.00	
		5,240,707.07
Total		12,482,151.51

STATE OF CONNECTICUT,
County of Hartford, ss:

C. H. Remington, being duly sworn, says: that he is Assistant Treasurer of The Ætna Casualty and Surety Company and that, to the best of his knowledge and belief, the foregoing is a true and correct statement of the financial condition of said Company as of December 31, 1918.

C. H. REMINGTON,
Assistant Treasurer.

Subscribed and sworn to before me this 8th day of April, 1919.

[Seal E. A. Giddings, Notary Public, Hartford, Conn.]

E. A. GIDDINGS,
Notary Public.

My Commission expires Feb. 1, 1923.

71 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the Matter of the Claim of Elizabeth Vaughn, Claimant-Respondent, against Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Certificate of Lodgment. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

72 Supreme Court of the United States.

CLARK KNITTING COMPANY, INC., and ÆTNA LIFE INSURANCE COMPANY, Plaintiffs-in-Error,

against

ELIZABETH VAUGHN, Defendant-in-Error.

Prayer for Reversal.

To the Supreme Court of the United States:

Come now Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Co., Insurance Carrier, plaintiffs-in-error, and pray for a reversal of the order of the Supreme Court of the State of New York herein entered in the office of the clerk of the Appellate Division thereof, in the Third Judicial Department in said state, on the 6th day of May, 1919, affirming a decision and award of the State Industrial Commission of said state, a reversal of which is likewise prayed, entered on the 12th day of June, 1918, and plaintiffs-in-error further pray for a reversal of the judgment of the Court of Appeals of said state, rendered on the 8th day of April 1919, upon which said order hereinbefore first mentioned was entered.

And your petitioners will every pray.

Dated May 9th, 1919.

ROBERT E. WHALEN,
Of Counsel for Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier.

73 Supreme Court of the United States.

CLARK KNITTING COMPANY, INC., and ÆTNA LIFE INSURANCE COMPANY, Plaintiffs-in-Error,

against

ELIZABETH VAUGHN, Defendant-in-Error.

Petition for Writ of Error.

To the Supreme Court of the United States and to the Honorable Justices thereof:

The petition of the Clark Knitting Co., Inc., Employer, a corporation organized and incorporated under the laws of the State of New

York, and the Ætna Life Insurance Company, Insurance Carrier, an insurance corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Connecticut and having been duly authorized to transact the business of insurance in the State of New York as an insurance corporation respectfully shows:

First. On or about the 10th day of April 1917, the above named, Elizabeth Vaughn, commenced before the State Industrial Commission of the State of New York, a special proceeding against your petitioners and therein alleged:

(*a.*) That said Elizabeth Vaughn at about 7.10 A. M. on April 9, 1917, while employed as assistant forelady at the plant of her employrer, was helping a girl in the factory locate a screw from a machine, and that while on the floor, the electricity drew her hair into a shaft removing her scalp.

(*b.*) That as a result of her injury received on April 9, 1917, the said Elizabeth Vaughn, has been disabled from working ever since April 9th, for which loss of earning power she claimed, in accordance with the provisions of Chapter 41 of the Laws of 1914 of the State of New York, commonly known as the Workmen's Compensation Law, compensation which said State Industrial Commission has awarded to Elizabeth Vaughn in the sum of $7.69 weekly to be continued during the disability suffered by the claimant which
74 your petitioners have paid.

(*c.*) That by reason of her said injury as aforesaid, said Elizabeth Vaughn had also sustained "serious facial and head disfigurement" for which she claimed a further allowance which said State Industrial Commission made to her in the sum of $3500.00 by virtue of the amendment made by Chapter 622 of the laws of 1916 of the State of New York, to Subdivision 3 of Section 15 of said Workmen's Compensation Law, whereby "In case of any injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award of compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars."

Second. In said proceeding before the State Industrial Commission your petitioners appeared and contended that to make to said Elizabeth Vaughn any award for facial or head disfigurement under the provisions of said amendment to Subdivision 3 of Sec-ion 15 of said Workmen's Compensation Law would be tantamount to making an award not for loss of earning power, but for damages, and would, therefore, deprive your petitioners of their property without due process of law, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Third. The written decision and award which said State Industrial Commission, after hearing the allegations and proofs of the parties, entered on the 12th day of June 1918, overruled the contention of your petitioners specified in Paragraph Second of *of* this pe-ition, but contained no finding that said facial and head disfigurement had in any wise impaired the earning capacity of said Elizabeth Vaughn to whom said decision and award decreed that your

petitioners pay $7.69 weekly to be continued during disability suffered by claimant and for said facial and head disfigurement, the said further sum of $3500.

Fourth. From said decision and award of said State Industrial Commission your petitioners duly appealed to the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York, where, upon the argument of said appeal which duly came on to be heard, your petitioners, through their counsel, duly urged against the validity of said award of $3500 for said facial and head disfigurement, the contention hereinbefore specified in paragraph Second of this petition, but said Appellate Division of the Supreme Court overruled said contention and, by an order bearing date November 12th, 1918, and entered in the office of the clerk of said Appellate Division on the 19th day of November, 1918, said Appellate Division wholly affirmed said decision and award of said Commission so entered on the 12th day of June, 1918.

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Fifth. From said order of said Appellate Division, your petitioners duly appealed to the Court of Appeals of the State of New York, which was and is the highest court of said state in which could be had a decision of the question so raised by said contention of your petitioners hereinbefore specified in paragraph second of this petition, and which contention your petitioners, through their counsel, duly urged upon the argument of said appeal to the Court of Appeals of the State of New York which duly came on to be heard. But said Court of Appeals overruled said contention of your petitioners, and, by its judgment rendered April 8th, 1919, said Court of Appeals affirmed said order of said Appellate Division of the Supreme Court, to which said Court of Appeals sent down its remittitur, consisting of a copy of said judgment of said Court of Appeals and of the papers upon which said Court of Appeals made its said judgment, and said remittitur was filed on the 9th day of April, 1919, in the office of the clerk of said Appellate Division where said remittitur now remains of record. Upon said remittitur a final order, reexamination and reversal of which by this court your petitioners seek, was entered on the 6th day of May, 1919, in the office of the clerk of said Appellate Division whereby the said judgment of the court of Appeals herein became the order of said Appellate Division, and the sum of $99.50, costs of said appeal to said Court of Appeals was awarded against your petitioners.

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Sixth. In said judgment of the Court of Appeals as well as in said final order thereon so entered on the 6th day of May, 1919 in the office of the clerk of said Appel-ate Division, there was drawn in question the validity of a statute of the State of New York, to wit, said amendment made by said Chapter 622 of the Laws of 1916 to Subdivision 3 of 15 of said Workmen's Compensation Law, upon the ground of the repugnancy of said statute to the due process clause of the Fourteenth Amendment to the Constitution of the United States, but the decision was in favor of the validity of such statute.

Seventh. By virtue of the provisions of said Workmen's Compensation Law, said State Industrial Commission which is now composed

of John Mitchell, Edward P. Lyon, James M. Lynch, Henry D. Sayer and Frances E. Perkins, appeared by the Attorney General of the State of New York both in said Appellate Division and in said Court of Appeals, in support of the validity of said statute thus brought up for review by said appeals.

Wherefore your petitioners pray that a writ of error may be allowed and issued, directed to the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, commanding said Appellate Division to send to the Supreme Court of the United States the record of all and singular the record and papers in said special proceeding and for citation and supersedeas to stay execution, and to the end that the errors of which your petitioners complain herein and in the assignment of errors herein filed may be reviewed and, if errors be found, corrected conformably to the Constitution and Laws of the United States.

77 And your petitioners will ever pray.

Dated, May 9th, 1919.

CLARK KNITTING COMPANY,
Employer, and
ÆTNA LIFE INSURANCE CO.,
Insurance Carrier,
By ROBERT E. WHALEN, *Counsel.*

78 STATE OF NEW YORK,
City and County of Albany, ss:

Robert E. Whalen being duly sworn deposes and says that he is the regularly retained counsel for the petitioners Clerk Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, in this proceeding. That he has read the foregoing petition, the contents whereof he knows to be true.

That the reason why this verification is made by deponent is that said petitioners are corporations none of whose officers reside or are within the County of Albany, State of New York, where deponent resides and has his place of business.

ROBERT E. WHALEN.

Subscribed and sworn to before me this 9th day of May, 1919.

[Seal Edith L. Jones, Notary Public, Albany County, N. Y.]

EDITH L. JONES,
Notary Public, Albany County, N. Y.

79 Supreme Court of the United States.

CLARK KNITTING COMPANY, INC., and ÆTNA LIFE INSURANCE COMPANY, Plaintiffs-in-Error,

against

ELIZABETH VAUGHN, Defendant-in-Error

Assignment of Errors.

Come now the Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, plaintiffs-in-error, and make and file this their assignment of errors:

The Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York in its order entered May 6th, 1919 whereby the judgment of the Court of Appeals of the State of New York rendered April 8th, 1919, was made the judgment of said Appellate Division, erred, as did also said Court of Appeals and the State Industrial Commission of the State of New York, in overruling the *the* contention of your petitioners that to make the said Elizabeth Vaughn, an award in this proceeding for facial and head disfigurement under the amendment made by Chapter 622 of the Laws of 1916 of the State of New York to Subdivision 3 of Section 15 of the Workmen's Compensation Law of said state, would deprive your petitioners of their property without due process of law in contravention of the Fourteenth amendment to the Constitution of the United States.

Dated, May 9th, 1919.

ROBERT E. WHALEN,
Of Counsel for the Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Co., Insurance Carrier.

80 [Endorsed:] Supreme Court of the United States. Clark Knitting Co., Inc., Employer, and Ætna Life Insurance Co., Insurance Carrier Plaintiffs-in-error, against Elizabeth Vaughn Defendant-in-error. Prayer for Reversal, Petition for Writ of Error, and Assignment of Errors. Robert E. Whalen, Counsel for Plaintiffs-in-Error. Office and Post Office Address, 126 State Street, Albany, N. Y.

81 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court, Appellate Division in and for the Third Judicial Department of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, Appellate

Division, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Clark Knitting Company, Inc., and Ætna Life Insurance Company, and Elizabeth Vaughn, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the
82 United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Clark Knitting Company, and Ætna Life Insurance Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fourteenth day of May, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States, October Term, 1918. Clark Knitting Company, Inc., and Ætna Life Insurance Company, Pl'ffs in Error, vs. Elizabeth Vaughn. Writ of Error.

83 UNITED STATES OF AMERICA, *ss:*

To Elizabeth Vaughn, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court, Appellate Division, in and for the Third Judicial Department of the State of New York, wherein Clark Knitting Company, Inc., and Ætna Life Insurance Company are

plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, this fourteenth day of May, in the year of our Lord one thousand nine hundred and nineteen.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

Due and personal Service of a copy of the within Citation is hereby admitted this 16th day of May, 1919.

CHARLES D. NEWTON,
(E. C. A.),
Attorney General of the State of New York.

Endorsed on cover: File No. 27127. New York Supreme Court, Appellate Division, 3d Judicial Department. Term No. 1041. Clark Knitting Company, Inc., and Ætna Life Insurance Company, plaintiffs in error, vs. Elizabeth Vaughn. Filed May 21st, 1919. File No. 27127.

BRIEF FOR PLAINTIFFS-IN-ERROR.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 376.

CLARK KNITTING CO., INC., AND ÆTNA LIFE INSURANCE COMPANY,
Plaintiffs-in-Error,

vs.

ELIZABETH VAUGHN,
Defendant-in-Error.

In Error to the Supreme Court, Appellate Division, Third Judicial Department of the State of New York.

Statement of the Case.

This case involves (Transcript p. 47), the constitutionality under the due process clause of the 14th amendment to the Constitution of the United States, of the disfigurement clause which, added by Chapter 622 of the Laws of 1916 of the State of New York to Subdivision 3 of Section 15 of New York Wodrkmen's Compensation Law, provides "that in case of an injury resulting in serious facial or head disfigurement the Commission may, in its discretion, make such award of compensation as it may deem

proper and equitable in view of the nature of the disfigurement not to exceed $3500."

So much of the New York Workmen's Compensation Law thus amended as is deemed necessary to the decision of this cause is annexed to the brief in the New York Central Railroad Co. vs. Bianc, as Appendix A, page 17, which is No. 374 upon the docket of the present term of this court.

Section 19 added to Article 1 of the Constitution of the State of New York in 1913 effective January 1, 1914, is annexed to the brief of the New York Central Railroad Co. vs. Bianc, as Appendix B thereof, which is No. 374 upon the docket of the present term of this court. It is also printed in full 243 U. S. at Pages 195, 196.

This proceeding was commenced by filing with the State Industrial Commission Employer's First Report of Injury dated April 10, 191—. A claim was filed with the State Industrial Commission by the claimant which bears the date July 25, 1917. This claim alleges that upon the 9th day of April, that while helping a girl in the factory locate a screw from the machinery, and while on the floor the electricity drew her hair into a shaft removing the scalp. (Transcript pp. 3 and 5.)

The case came on for a hearing on the 23rd day of May, 1918, before Commissioner James M. Lynch of the State Industrial Commission, and at that hearing the following objections were made to an award herein. (Transcript p. 23.)

1. "I object to the making of any award on the ground that the amendment to Subdivision 3 of Section 15 of Chapter 622 of the Laws of 1916, pro-

viding for serious facial disfigurement is unconstitutional in that it assesses damages without the right of a trial by jury in addition to providing compensation for disability.

2nd. It is unconstitutional in that it is contrary to the Constitution of the United States and to the Consitution of the State of New York in that it takes property without due process of law.

3rd. The Compensation Law of the State of New York being a compulsory act, compensation cannot be awarded for disability and additional compensation for damages for disfigurement in violation of the Constitution of the United States and the Constitution of the State of New York.

4th. Chapter 622 of the Laws of 1916 added to Section 15, Subdivision 3 of the Workmen's Compensation Law of the State of New York is unconstitutional and void."

The Commission, however, overruled the objections and on the same day made its decision and award, (Transcript pp. 25-26.) As the statute designates the determination of the Commission, whereby in addition to continuing the claim for further hearing to determine the extent of disability resulting from the accident it stated that an award of compensation is hereby made against the Clark Knitting Company, Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, to Elizabeth Vaughn, injured employee in the sum of $3500.00 on account of and in view of the serious facial and head disfigurement resulting from injuries sustained on April 9, 1917." The Appellate Division of the Supreme Court in the Third Judicial Department,

unanimosuly and without opinion affirmed the decision and award of the Commission. (Transcript pp. 27-28-30.) On further appeal taken to the Court of Appeals, the Appellate Division's order of affirmance was in turn affirmed. (226 N. Y. 585) on the authority of matter of Sweeting vs. American Knife Company (226 N. Y. 199) decided on the same day. (Transcript P. 31.) The opinions in the Court of Appeals are also printed at pp. 30-33 of the transcript of the record in the Sweeting case, which is No. 375 upon the docket of the present term of this court.

The Court of Appeals sent down its remittitur to the Appellate Division to which the writ of error to this court is directed. (Transcript pp. 32, 47.)

Specification of Error.

Plaintiffs-in-Error contend that the Court of Appeals as also the Appellate Division and the State Industrial Commission erred in not holding that to make the defendant-in-error an award for facial and head disfigurement under the provisions of Section 15 of the Workmen's Compensation Law would deprive the plaintiffs-in-error of their property without due process of law in contravention of the provisions of the 14th amendment to the Federal Constitution.

Argument.

Statement of Facts.

On April 9, 1917, at 7:10 A. M., claimant herein was employed by the Clark Knitting Co., Inc., as a neck cutter in the finishing department. It seems that the operator of the tacking machine lost the

screw out of her needle bar and claimant came along and asked her what she was looking for and volunteered to help find it. Claimant discovered it on the floor on the opposite side of the sewing machine table, got down on the floor and reached under the shaft and her hair caught in the revolving shaft and removed the scalp from her forehead to base of scalp. By reason of which she suffered evulsion of the scalp from the hair line over the frontal area to the 7th vertebrae behind, ears were torn down and cartilages severed, losing the entire scalp and necessitating a suitable wig. (Transcript pp. 3, 4 and 5.) For this facial and head disfigurement the Commission awarded her $3500. (Transcript pp. 23 and 25.) The decision of the Commission does not specify the nature of the disfigurement, but simply says the injuries received by Eliz. Vaughn on said date also resulted in serious facial or head disfigurement. (Transcript p. 25.)

There is nothing in the record to show that claimant's inability to work or inability to earn wages is due to the disfigurement. While it is true that claimant alleges that she has been unable to work since the accident, it has been due to her physical condition rather than to her disfigurement. (Transcript 25.) No negligence or want of care on the part of the employer has been alleged or found.

POINTS.

For a discussion of the points in this case, the court is respectfully referred to the brief in the case of Sweeting vs. American Knife Co., which is No. 375 upon the docket of the present term of this court which is to be argued herewith.

The award for disfigurement should be reversed and this case should be remanded for further proceedings not inconsistent with the decision of this court.

All of which is respectfully submitted.

Dated October 13, 1918.

WILLIAM H. FOSTER,
Of Counsel for Plaintiff-in-Error.

Office Supreme Court, U. S.
FILED
OCT 10 1919
JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 376.

CLARK KNITTING CO., INC., Employer, and AETNA LIFE INSURANCE COMPANY, Insurance Carrier,
Plaintiffs in error,

against

ELIZABETH VAUGHN,
Defendant in error.

IN ERROR TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT.

CHARLES D. NEWTON,
Attorney-General.

E. C. AIKEN,
Deputy Attorney-General.

Of Counsel for the State Industrial Commission.

Brief for the State Industrial Commission

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

No. 376.

CLARK KNITTING CO., *Employer* and AETNA LIFE INSURANCE COMPANY, Insurance Carrier, *Plaintiffs-in-Error,*

against

ELIZABETH VAUGHN, *Defendant-in-Error.*

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK.

STATEMENT OF CASE

This is a writ of error to review a judgment of the Court of Appeals of the State of New York, which affirmed an order of the Appellate Division, Third Department, which unanimously affirmed an award of the State Industrial Commission made to the claimant in the sum of $3,500 for facial and head disfigurement, and the claim con-

tinued for further hearing to determine the extent of disability resulting from said accident. (Fol. 43.)

The business of the employer was that of manufacturing knit underwear. (Fol. 3.) The claimant was a neck cutter in the finishing department. (Fol. 4.) She was forty-six years of age. (Fol. 17.) At the time of the accident a screw had been lost out of the needle bar of a tacking machine and the claimant discovered it on the floor on the opposite side of the sewing machine table and she got down on the floor and reached under the shaft and her hair caught in the revolving shaft and removed the scalp from the forehead to the base of the skull. (Fol. 15.) There was complete avulsion of the scalp from the hair line over the frontal area to the seventh vertebra behind. The ears were torn down and the cartilages severed resulting in the loss of the whole scalp. (Fol. 7.)

At the time of the accident an effort was made to control the hemorrhage and revive her. She finally rallied from the shock and skin grafting was commenced under anesthesia, small patches being done once in two, three or four weeks according to her condition. (Fol. 20.) Her condition was very grave all through the early weeks. Skin was grafted upon her head seven or eight times and each time fifty to one hundred individual grafts were put on. These grafts had to be the full thickness of the skin — an ordinary graft would not do. It was necessary to take the skin down to the fat to make a scalp that would stand the least bit of pressure. (Fols. 20, 33.) In all there were over five hundred and twenty-five grafts. (Fol. 21.) The skin which was grafted

was removed from the thighs. The removal of such a large quantity of skin affected the general system as it lessened the amount of skin surface and so affected the action of the kidneys. (Fol. 23.) This gave the claimant a more or less chronic Bright's Disease, which together with the action of the anesthetic also affected her heart. (Fols. 20, 23.)

The result of her injury and the treatment which she received following the injury resulted not only in diseased kidneys but in a very nervous condition. Claimant cannot walk very far nor stoop over to do her housework. Her face has become very dark — previous to the accident she had a fair complexion (fols. 16, 32.) Her eyesight is somewhat affected, the eyebrow over the left eye having been drawn up (fol. 17) so that she is to all practical purposes permanently disabled. (Fol. 21.)

The insurance carrier paid compensation for disability until about the 6th of May (fol. 36), and at the hearing on June 12th an award was made of $3.500 for facial disfigurement. (Fol. 39.) The question which the insurance carrier now makes is that the amendment to the law allowing for serious facial disfigurement is unconstitutional. (Fol. 38.)

ARGUMENT

POINT I

No valid Constitutional objection has been raised and the award for facial disfigurement was properly made.

The Workmen's Compensation Law of New York was thoroughly discussed before this court on argument and reargument, and considered in the case of *New York Central R. R. Company* v. *White*, 243 U. S. 188, and a very exhaustive opinion written by Mr. Justice Pitney and concurred in by the entire court.

The gist of that opinion was that the common law gave the workman compensation for damages when the employer was at fault. That that remedy was taken away and a remedy given for damages received, irrespective of fault; that the Legislature had the right to place such a burden upon the employer, providing the same was reasonable.

Since the decision of that case this court has on two occasions had to deal with Workmen's Compensation Laws of other states. In the case of *Middleton* v. *Texas Power & Light Company*, this court had the question raised by the employe that the Texas Employers Liability Act was in conflict with the due process and equal protection provisions of the Fourteenth Amendment. The court, through Mr. Justice Pitney, stated in reference to the compensation allowed under said statute:

> "Such compensation is the statutory substitute for damages otherwise recoverable because of injuries suffered by an employe, or his death occasioned by such injuries, when due to the negligence of the employer or his servants; it being declared that the employe of a subscribing employer, or his representatives or beneficiaries in case of his death, shall have no cause of action against the employer for damages except where a death is caused by the wilful act or omission or gross negligence of the employer."

Again in the case of *Arizona Copper Company* v. *Hammer,* this court had under consideration the Employers Liability Law and the Workmen's Compulsory Compensation Law of Arizona. The Employers' Liability Law of Arizona designated certain employments as inherently hazardous and dangerous to workmen, and imposed upon the employer, without regard to the question of fault, liability and compensatory damages for accidental personal injuries or death of an employee arising out of and in the course of the employment and due to the condition or conditions of the occupation, in cases where such injury of the employe shall not have been caused by his own negligence.

Regarding this law, the court, through Mr. Justice Pitney says:

> "We are unable to say that the Employers' Liability Law of Arizona, in requiring the employer in hazardous industries to assume — so far as pecuniary consequences go — the entire risk of injury to the employee attributable to accidents arising in the course of the employment, and due to its inherent

conditions, exceeds the bounds of permissible legislation, or interferes with the constitutional rights of the employer."

It is further stated:

"It is objected that the responsibility of the employer under this statute is unlimited; but this is not true except as it is true of every action for compensatory damages where the amount awarded varies in accordance with the nature and extent of the damages for which compensation is made. It is said that in actions by employees against employers juries are prone to render extravagant verdicts. The same thing has been said, and with equal reason, concerning actions brought by individuals against railroad companies, traction companies, and other corporations."

And further:

"The statute says to the employer, in effect: 'You shall not employ your fellowmen in a hazardous occupation for gain, you being in a position to reap a reward in money through selling the produce of their toil, unless you come under an obligation to make appropriate compensation in money in case of their death or injury due to the conditions of the occupation.' The rule being based upon reasonable grounds affecting the public interest, being established in advance, and applicable to all alike under similar circumstances, there is, in our opinion, no infringement of the fundamental rights protected by the 14th Amendment.

"Some expressions contained in our opinion in the *White Case* (243 U. S. 203–205) are treated in argument as if they were equivalent to saying that if a state, making a legis-

lative adjustment of employers' liability, departs from the common-law system of basing responsibility upon fault, it must confine itself to a limited compensation, measured and ascertained according to the methods adopted in the compensation acts of the present day. Of course nothing of the kind was intended. In a previous part of the opinion (pp. 196–200) it had been shown that the employer had no constitutional right to continued immuity from liability in the absence of negligence, nor to have the fellow-servant rule and the rules respecting contributory negligence and assumption of risk remain unchanged. The statutory plan of compensation for injured workmen and the dependents of those fatally injured — an additional feature at variance with the common law — was then upheld; but, of course, without saying that no other would be constitutional. For if, as we held in that case, the novel statutory scheme of awarding compensation according to a prearranged scale is sustainable, it follows, perhaps *a fortiori* that the Arizona method of ascertaining the compensation according to the facts of each particular case — substantially the common-law method — is free from objection on constitutional grounds. Indeed, if a state recognizes or establishes a right of action for compensation to injured workmen upon grounds not arbitrary or fundamentally unjust, the question whether the award shall be measured as compensatory damages are measured at common law, or according to some prescribed scale reasonably adapted to produce a fair result, is for the state itself to determine. Where the compensation should be paid in a single sum after judgment recovered, as is required by the Arizona Employers' Liability Law just as under the common-law system in the case of a judgment

> based upon negligence, or whether it would be more prudent to distribute the award by instalment payments covering the period of disability or of need, likewise is for the state to determine, and upon this the plaintiffs in error can raise no constitutional question."

And Mr. Justice Holmes, in his concurring opinion also says:

> "But if it is thought to be public policy to put certain voluntary conduct at the peril of those pursuing it, whether in the interest of safety or upon economic or other grounds, I know of nothing to hinder. A man employs a servant at the peril of what that servant may do in the course of his employment, and there is nothing in the Constitution to limit the principle to that instance."

The argument of the plaintiff-in-error to the effect that an award for disfigurement deprives the employer of his property without due process of law should be turned about. If the employer's argument is sound, the employee is the one that is deprived of property without due process of law and not the employer. The employer contends, of course, that the Workmen's Compensation Law is constitutional and that it is intended to and does take the place exclusively of the remedy for negligence formerly existing against the railroad company for injuries received by its employees. (See *Shanahan* v. *Monarch Engineering Co.*, 219 N. Y. 469). Supposing, however, an employee receives an injury which does not disable him from working but removes say all the hair from his head or smashes his nose or cuts off his ears. If the employee sues the employer for this and it is a case where there is

negligence, the employer will reply that there is no remedy against the employee for the reason that the Workmen's Compensation Law is exclusive. The employee then petitions for compensation under the Workmen's Compensation Law and is met by the argument that the employer's property is taken without due process of law as there is no diminution of earning power. The employee, therefore, is deprived of any remedy against his employer for an actionable injury. It cannot be that the reasoning of Mr. Justice Pitney in the White case can be twisted into any such conclusion.

The argument of the appellant that facial disfigurement is wholly unrelated to ability to work will not bear the test of common experience. It is common knowledge and observation that an employer is influenced by a man's personal appearance and that serious damage to the face will continue to be a detriment to a man or woman's ability to earn during his or her entire life. It may be conceded that facial disfigurement is a special and unique form of disability; that it may not disable a man from actual manual labor as is the case with some other accidents. It is on account of this special consideration that the law has taken such cases out of the usual category of disabling accidents where award is made by the week for the disability suffered. Therefore, the general purpose of the law is for a weekly compensation, but the special feature of facial disfigurement is merely an exception as to the manner of payment for disability while the general considerations for the substitution of a theory of compensation for actions for negligence still obtain.

Awards for facial disfigurement, however, are in general accord with other parts of this law. The law provides for a definite amount for permanent partial disability, for the loss of any fingers or of any toes, for the loss of a leg, hand and arm, or an eye. All these are losses of portions of the body and similar to the loss of a nose or an ear. A man may lose one toe or several toes, without impairing his earning capacity. The loss of an eye is a loss of a part of the face. Of course, the loss of an eye is much more apt to interfere with a man's earning power than the loss of an ear or possibly a nose, but it is only a matter of degree.

The argument of plaintiff-in-error proceeds upon the assumption that disfigurement has no relation to earning capacity. He further assumes that:

> "Reparation for diminution or destruction of earning power being, then, the basis of constitutional sanction for compulsory payment of compensation, in the absence of fault on an employer's part, the award for disfigurement, under review herein, cannot stand."

By implication he assumes also, that in this or other cases of facial disfigurement, proof might be made of diminution of earning power on account of facial disfigurement.

It is not for this court to pass upon any such question of fact. The question here is as to the law itself — does it invade the constitutional rights?

Judge Cardozo says in the opinion in this case:

> "One cannot defeat a statute by a presumption that in its enactment the truths of

> life have been ignored. The presumption is, on the contrary, that they have been perceived and heeded. But one of the truths of life is that serious facial disfigurement has a tendency to impair the earning power of its victims. In some callings it would rule out altogether an applicant for employment. In most it would put him at a disadvantage when placed in competition with others."

In the case of *Ball* v. *William Hunt & Sons, Ltd.*, 5 B. W. C. C. 459, the House of Lords had before it the case of a workman who was blind in one eye, but was to all appearances two-eyed. As the result of a new accident the blind eye had to be removed and he could no longer conceal his infirmity. He was then quite unable to obtain work through either his old employers or from anywhere else. The House of Lords held that incapacity for work includes inability to get work, and that the man was entitled to compensation for the disfigurement.

All the features of the Compensation Law of New York were before this court upon the first argument and upon the reargument of the White case. The amendment in question had been adopted and was a part of the law at that time, being an amendment to subdivision 3 of section 15, added by Chapter 22, Laws of 1916, as follows:

> " In case of an injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars."

Counsel for the plaintiff-in-error contends (page 10), that due process of law contemplates

that damages shall be fixed and awarded, if at all, by a jury and not by a court. The amendment to the Constitution of the State of New York, however, provides "for the adjustment, determination and settlement with or without trial by jury of issue which may arise under such legislation."

It is recognized by a long list of decisions that the first ten amendments to the United States Constitution are not operative on the states:

Baron v. *Baltimore*, 7 Pet. 243.
Spies v. *Illinois*, 123 U. S. 131.
Barrington v. *Missouri*, 205 U. S. 483.
Twining v. *New Jersey*, 211 U. S. 93.

THE FACE

Counsel for plaintiff-in-error has spoken of the disfigurement provision of the law as the *beauty clause*, as if it were of minor importance — a thing of shreds and patches — implying that it did not much matter if a man should lose his face, provided his earning ability were not diminished. We have only to obtain the Chinese viewpoint to see that to lose one's face is the direst of calamities.

The soldier in the great war was more concerned over injury to the face than any other part of his body.

To woman the face is her dearest possession. Powder and rouge and paste, and divers other artifices are used to preserve it. The beauty of the paintings of the old masters is centered in the face. A half a million dollars would not purchase the Madonna di San Sisto of Raphael or the Mona Lisa of Leonardo da Vinci.

The face stamps the individual so that he may be recognized. As no two faces, so no two souls are absolutely alike. An unnumbered series of individual faces are formed after the same general type, without making any one the exact counterpart of the other.

Helen of Troy formed the motif of Homer's Iliad. As Marlowe says:

" Is this the face that launched a thousand ships
And burned the topless towers of Ilium?"

The face is the expression of the mind. It is that physical portion of us that distinguishes us from the brutes.

" See what a grace was seated on this brow
Hyperion's curls; the front of Jove himself;
An eye like Mars, to threaten and command;
A station like the herald Mercury
New-lighted on a heaven-kissing hill,—
A combination and a form indeed
Where every god did seem to set his seal
To give the world assurance of a man."

In the face are contained four senses which are the sources of pleasurable delight.

" Oh what a noble gift of heaven is the light of the eye," says Schiller.

With the ear we hear oftentimes " the still, sad music of humanity."

With the nose we may inhale all the perfumes of Araby. Properly formed it fits in with the scheme of personal beauty.

Cyrano de Bergerac's nose made it impossible for him to try to win the love of Roxane.

Then to some come the pleasure of taste, the delights of eating and drinking. Even the poet Keats is said to have put pepper on his tongue

that he might enjoy to a more superlative degree the coolness of the claret which he drank.

The sense of touch reaches consummation in the face, whether it be the passionate kiss of love, the chaste kiss of friendship or the Judas kiss of treachery.

The history of the world might be written in faces,— the snub nose of Socrates — the warty face of Cromwell — the majestic head of Washington — the strong, sad features of Lincoln.

Then there are the faces of women who have troubled the peace of the world — Helen of Troy and Cleopatra, Beatrice Cenci and Beatrice d'Este, Lady Hamilton and Aspasia, Queen Elizabeth, the virgin but virile Queen of England, and Joan of Arc, the martyred Maid of France.

We all look forward to see the faces of these men and women of history, as well as those of personal friends, for

"With the morn those angel faces smile
Which I have loved long since and lost awhile."

POINT II

THE ORDER OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, AFFIRMING THE AWARD OF THE WORKMEN'S COMPENSATION COMMISSION SHOULD BE AFFIRMED.

Respectfully submitted,
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